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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Redacted]

1

FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date: JUL 21 2004

IN RE:

Applicant:

[Redacted]

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 210 of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Northern Regional Processing Facility, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. The decision was based on adverse information relating to the applicant's claim of employment for Kansas City Produce (KCP).

On appeal, the applicant states that the director denied the application without giving her sufficient time to respond to an earlier letter. She provides additional documentation in support of her agricultural claim.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, and must be otherwise admissible under section 210(c) of the Immigration and Nationality Act and not ineligible under 8 C.F.R. § 210.3(d). 8 C.F.R. § 210.3(a). An applicant has the burden of proving the above by a preponderance of the evidence. 8 C.F.R. § 210.3(b).

The applicant claimed on her application that she had engaged in 146 man-days of qualifying agricultural employment for [REDACTED] from May 1985 to April 1986. In support of that claim she submitted three corresponding affidavits, from foremen [REDACTED] and [REDACTED] and from grower [REDACTED]. She also provided affidavits from her brother [REDACTED] and from [REDACTED] attesting to her residence during the qualifying period.

In attempting to verify the applicant's claimed employment, the facility director acquired information that seemingly contradicted the applicant's claim. According to the director, the owner of KCP stated that [REDACTED] did not work there during the requisite twelve-month period. The director further concluded that [REDACTED] payroll records supported the owner's statement, and that the records also showed that Paul Ramirez only worked eight days there. The director concluded that these individuals were not competent to attest to anyone's employment there for over 90 days. Because of this, he concluded the affidavit from Julian Ramirez also possessed diminished credibility.

On December 28, 1990, the applicant was advised in writing of the adverse information obtained by the director, and of the director's intent to deny the application. The applicant was granted thirty days to respond. In a letter dated January 10, 1991, the applicant requested that she be given until February 28, 1991 to respond further. Nothing further was submitted by the applicant. The director concluded the applicant had not overcome the derogatory evidence, and denied the application on April 2, 1991.

The applicant submitted a boilerplate appeal used by many applicants, in which she claimed that she received the denial notice before she had time to submit further evidence. It is noted that the director waited until more than enough time had passed before denying the application.

On appeal, the applicant provides photocopies of 46 "fill-in-the-blank" affidavits from individuals claiming to have worked for [REDACTED] at KCP. None of the affiants states that the applicant worked there.

Generally, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. 8 C.F.R. § 210.3(b)(1). Evidence submitted by an applicant will have its sufficiency judged according to its probative value and credibility. 8 C.F.R. § 210.3(b)(2). Personal testimony by an applicant which is not corroborated, in whole or in part, by other

credible evidence (including testimony by persons other than the applicant) will not serve to meet an applicant's burden of proof. 8 C.F.R. § 210.3(b)(3).

There is no mandatory type of documentation required with respect to the applicant's burden of proof; however, the documentation must be credible. All documents submitted must have an appearance of reliability, i.e., if the documents appear to have been forged, or otherwise deceitfully created or obtained, the documents are not credible. *United Farm Workers (AFL-CIO) v. INS*, Civil No. S-87-1064-JFM (E.D. Cal.).

The applicant has not made any statement, or submitted any more documents, since the appeal was filed on November 18, 1991. Although some [REDACTED] supervisors, in other cases, later provided statements reiterating that they had truly supervised the aliens whose applications had been denied, none has done so in this case. Nor has the applicant provided any affidavits from employees of non-profit organizations, who have clearly stated in other cases that they provided outreach and nursing services for the migrant workers at KCP, and named such workers.

Under these circumstances, it is concluded that the applicant has failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. Consequently, the applicant is ineligible for adjustment to temporary resident status as a special agricultural worker.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.